

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TAMARA K. BAUGHN; LLOYD D.
MORAN (aka Chip), husband and
wife,

Plaintiffs,

v.

DONALD J. BODENMAN and JANE
DOE BODENMAN, husband and
wife; PATRICK WOODS and JANE
DOE WOODS, husband and wife;
TRACY SMITH and MARGIE
SMITH, husband and wife;
LEONARD BREUER and JANE DOE
BREUER, husband and wife; JEFF
MOE and JANE DOE MOE, husband
and wife; DIVERSIFIED
PROPERTIES, INC., a Washington
Corporation; THE DIAMOND
PILLAR GROUP, INC., a Nevada
Corporation licensed to do business in
Idaho and also d.b.a. CHOICES; and
ELECTRONIC SERVICE PROVIDER
USA, INC., aka E.S.P., a Washington
Corporation,

Defendants.

NO. CV-08-167-RHW

**ORDER DENYING PLAINTIFFS'
MOTION FOR DEFAULT
JUDGMENT AGAINST
PATRICK WOODS AND
PLAINTIFFS' MOTION FOR
ATTORNEY FEES AND COSTS
BY DEFAULT JUDGMENT
AGAINST PATRICK WOODS**

Before the Court are Plaintiffs' Motion for Default Judgment against Patrick Woods (Ct. Rec. 3) and Plaintiffs' Motion for Attorney Fees and Costs by Default Judgment against Patrick Woods (Ct. Rec. 5). These motions were heard without oral argument.

**ORDER DENYING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT
AGAINST PATRICK WOODS AND PLAINTIFFS' MOTION FOR
ATTORNEY FEES AND COSTS BY DEFAULT JUDGMENT AGAINST
PATRICK WOODS ~ 1**

1 Plaintiffs seek to have the Court enter default judgment against Defendant
2 Patrick Woods, and to recover attorney fees and costs by default judgment.
3 Plaintiffs argue that they are entitled to default judgment under Rule 55 of the
4 Federal Rules of Civil Procedure (FRCP) because the Defendant has failed to
5 “plead or otherwise defend” Plaintiffs’ claims for affirmative relief against him.
6 Plaintiffs filed their initial complaint on May 23, 2008.

7 Since the filing of the instant motion, Defendant Patrick Woods filed a
8 notice of appearance on September 19, 2008. In his Notice of Appearance
9 Defendant Woods asserted that he would like to have his case presented before the
10 Judge because some information in the Complaint is misleading and untrue (Ct.
11 Rec. 7), which the Court construes liberally as an answer. Plaintiffs filed an
12 Amended Complaint on September 24, 2008, and many of the Defendants waived
13 service. *See* Fed. R. Civ. P. 4(d)(3)(providing that a defendant who, before being
14 served with process, timely returns a waiver need not serve an answer to the
15 complaint until 60 days after the request was sent). Additionally, on October 28,
16 2008, counsel for all named Defendants in the case filed a notice of appearance
17 (Ct. Rec. 14).

18 Rule 55 provides for the entry of default with regard to a claim for
19 affirmative relief against a party who has failed to plead or otherwise defend as
20 provided by the FRCP. A district court’s decision whether to enter a default
21 judgment is a discretionary one. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
22 1980) (citations omitted). Default judgments are ordinarily disfavored and cases
23 should be decided upon their merits whenever reasonably possible. *Eitel v.*
24 *McCool*, 782 F. 2d 1470, 1472 (9th Cir. 1986).

25 The Court declines to exercise its discretion to enter default judgment at this
26 stage of the proceedings.

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28 **ORDER DENYING PLAINTIFFS’ MOTION FOR DEFAULT JUDGMENT
AGAINST PATRICK WOODS AND PLAINTIFFS’ MOTION FOR
ATTORNEY FEES AND COSTS BY DEFAULT JUDGMENT AGAINST
PATRICK WOODS ~ 2**

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion to Enter Default Judgment against Patrick Woods (Ct. Rec. 3) is **DENIED**.

2. Plaintiffs' Motion for Attorney Fees and Costs by Default Judgment against Patrick Woods (Ct. Rec. 5) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 3rd day of November, 2008.

S/ Robert H. Whaley

ROBERT H. WHALEY
Chief United States District Judge

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**ORDER DENYING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT
AGAINST PATRICK WOODS AND PLAINTIFFS' MOTION FOR
ATTORNEY FEES AND COSTS BY DEFAULT JUDGMENT AGAINST
PATRICK WOODS ~ 3**